

THE EVENING CRITIC.

ESTABLISHED AUGUST, 1868.

PRESIDENTIAL INABILITY.

An interesting report on the subject in the Thirty-fourth Congress—What the Statesmen of that Day Thought of the Question of Succession.

The question of the President's inability is the one now which is only secondary to the other question of his ultimate recovery. It is an undecided question whether the Vice-President could act even if requested to do so by the President himself. Opinions differ as to when the inability absolutely arises. Elsewhere we publish the views of ex-Senator Eaton, a sound constitutional lawyer, on the subject. Congressman Robeson, whose high standing as a lawyer and a parliamentarian will cause his views to be read with great interest and attention, has also been interviewed. He takes the original, and, at first thought, startling ground that the Vice-President himself is the sole judge of the time and circumstances under which the duties of the Presidency devolve upon him, under the Constitution. The evidence which he should require for such a decision is the most important element in the case, and this is also considered with some care by Mr. Robeson. He concludes that the most satisfactory evidence which could be furnished of the occurrence of the contingency of inability provided for by the Constitution would be the statement of the President himself to that effect. After that the best evidence would be the certificate of the attending surgeons accompanied by a notification from the members of the Cabinet.

As an interesting chapter in connection with this matter we publish the following report, which was made to the Senate of the United States on August 5, 1856, by Senator A. P. Butler, of South Carolina, who was at the time chairman of the Committee on Judiciary. The interesting document was exhumed from the voluminous piles of the Senate by Mr. Amzi Smith, who has charge of the Senate Document room, and who seems to know by heart all the papers ever filed there. He was asked whether a report had ever been made on the subject of Presidential inability and Presidential successors, and at once placed in our hands the following document:

On the 26th of June, 1856, the Senate adopted a resolution in the following words:

"Whereas, the Constitution of the United States provides that Congress may, by law, provide for the case of the removal, death, resignation or inability both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed, or a President shall be elected;

"And whereas it greatly concerns the peace of the country, and, perhaps, the very existence of the Government, that the laws enacted by Congress in pursuance of that provision of the Constitution, should be so comprehensive as to provide for every vacancy that can possibly occur in the office of President, and so clear as to permit of no controversy, any question of disputed succession to that high office.

"To the end, therefore, that all doubts or defects which may exist in our present laws on this subject may be remedied, and further controversy prevented:

"Be it resolved by the Senate of the United States, That the Committee on the Judiciary be instructed to examine the laws, and inquire whether the provisions that contain are constitutional, proper, and adequate, in all respects, to that purpose and end, and whether any further legislation be necessary or proper, and to report thereon by bill or otherwise."

The committee have considered this subject with great care, and herewith reports a bill adequate, in its opinion, to meet all the difficulties suggested.

The fifth section of the second article of the Constitution is the one to which the resolution refers; and that article, together with the acts of Congress passed to give it effect, have been brought under consideration by the committee. The section of the Constitution is as follows:

"In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed or a President shall be elected."

And the act of Congress, approved March 1, 1792, in reference to this subject, contains two sections, to wit, the ninth and tenth, which are as follows:

"Sec. 9. That in case of a removal, death, resignation, or inability, both of the President and Vice-President, the President of the Senate pro tempore, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives, for the time being, shall act as President of the United States until the disability be removed or a President shall be elected."

"Sec. 10. That whenever the offices of President and Vice-President shall both become vacant, the Secretary of State shall forthwith cause a notification thereof to be made to the executive of every State, and shall also cause the same to be published in at least one of the newspapers printed in each State, specifying that the President of the United States shall be appointed or chosen in the several States within forty-four days preceding the first Wednesday in December, then next ensuing; provided there shall be the space of two months between the date of such notification and the said first Wednesday in December; but if there shall not be the space of two months between the date of such notification and the first Wednesday in December, and if the term for which the President and Vice-President last in office were elected shall not expire on the third day of March next ensuing, then the Secretary of State shall specify in the notification that the electors shall be appointed or chosen within thirty-four days preceding the first Wednesday in December, in the year next ensuing, within which time the electors shall accordingly be appointed or chosen; and the electors shall meet and give their votes on the said first Wednesday in December, and the proceedings and duties of the said electors, and others, shall be pursuant to the directions prescribed in this act."

The committee will first give its attention to the consideration of this last section, as the one mainly involving constitutional authority to pass it under the provisions of the fifth section of the second article.

The first point of view in which this section of the act has been presented to the committee is this: Can Congress, under the general authority and in strict pursuance of the Constitution, do anything more than designate the officers to perform all the duties of President for the unexpired term of the vacancy occasioned in any one of the methods contemplated in the Constitution? It has been supposed and maintained, with a good deal of force, that the legislation of Congress must be con-

trolled by the first section of the second article of the Constitution, which reads as follows:

"The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, he shall be elected as follows:

"Each State shall appoint in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States shall be appointed an elector."

According to this view there can be no election of President except once in four years, and the executive functions of President may devolve upon an inferior officer, and be discharged by him, in pursuance of legislative enactment, during the full term for which the President and the Vice-President had been elected. If such be a fair construction of the Constitution, then a President might become so without the direct agency or the deliberate judgment of the parties to the federal compact. This is not the opinion of the committee. The legislation of 1792 evidently contemplated that the President pro tempore or Speaker should not only be a contingent functionary, with Presidential authority of a provisional character, but that he should be confined to a sphere of limited and prescribed duties. There are but two officers expressly provided in the election held once in every four years—a President and his substitute, the Vice-President. Beyond these no election by the primary constituent college is provided for. In case of a vacancy in the office of President, either by death, resignation, or other cause, the Congress may, by law, declare what officer shall act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected. The acting officer has not devolved on him, in terms, the powers and duties of the President, but the authority to perform the duties prescribed in the act of 1792. This act came from the minds of the framers of the Constitution, and was passed in circumstances well calculated to give it the sanction of intelligence and purpose. The President and Vice-President are elective by the people, and their authority directly from the Constitution. The officer on whom Congress devolves executive functions by law is not elective; he is not the choice of constitutional constituents, and if he could become President the day after the election of President and Vice-President, by their death, resignation, or removal, he would be a stranger to the people might indirectly become a ruler against their consent. While the committee do not question the constitutionality of the clause of the act above mentioned, they are satisfied that these provisions are not sufficiently full and explicit to guard, in all cases, against the mischief of confusion and anarchy.

The ninth section designates but two officers to take upon themselves the executive function, in the contingency specified, namely, the President of the Senate pro tempore, and in case there be no President, then the Speaker of the House of Representatives. These only are to perform the duties of President as specified in the ninth section. From the termination of one Congress to the meeting of the next, there may be no Speaker; and whether such Speaker or a President pro tempore would be the officer to take upon himself the duties and powers of an acting President is a question of too much importance to be left to the decision of the occasion.

The fourth clause of the second article of the Constitution reads as follows:

"No person, except a native born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident of the United States."

Your committee is of opinion that no one can be eligible to discharge, for the time being, the functions of President, unless he be thirty-five years old, and a native born citizen. A Speaker of the House, or a President pro tempore, might not have these qualifications; and if so, he could not act as President in compliance with the Constitution.

To guard against the danger of an entire vacancy in the office of President, prudence would seem to call for further legislation. The officer, who, shall act as President, after the President pro tempore and Speaker, to act as President? The Cabinet for the time being, in some prescribed order, would be most circumstances be the proper functionaries to fill the vacancy. In cases of death they would be the persons most fit to discharge the duties of the office.

That the question of the substitution of the Cabinet officers until to occupy the place of the President. In case of his impeachment for high political offenses, the Cabinet might be implicated, as *particeps criminis*, and ought not to be in position of office, or, at least, not in the position of becoming President; therefore, might be to arm them with powers of great mischief. Another question also might arise—whether they could be regarded as officers after the official functions of their principal had terminated, or were suspended. It might be deemed the duty of the substitute to have new advisers by removing obnoxious ones from their offending position.

Another class of functionaries has been indicated as properly suited for the discharge of the duties of the vacant Presidency, to wit, the Senators in the order of their official term of service, or when several Senators have the same continuous term of service, then the Senator oldest in years to be invested with the authority of an acting President for the purposes contemplated. There are two objections to such an arrangement: first, a question of duration of term, and actual age would have to be ascertained by some inquiry before the power could vest with such certainty as ought to be provided by law. Besides, Senators are local representatives, and such are not in a relation to be fitted for the discharge of federative trusts. The attention of the committee has been turned to another class of magistrates, namely: the Chief Justice and other Justices of the Supreme Court, as officers well calculated to discharge the duties of a provisional President, under an act of the legislature.

These magistrates have assigned to them a high jurisdiction, bringing within its scope duties and powers affecting the concerns and interest of the entire confederacy. They derive their commissions through high sources, and the responsible nature of those representing the whole and the separate parts of the confederacy, and are well entitled to confidence.

But for the provision, in the act of March 1, 1792, having so long existed on the statute book, conferring on the President of the Senate pro tempore, and Speaker of the House of Representatives, the power to act as provisional President, the committee would have preferred to designate the Chief Justice and other Justices of the Supreme Court, as the proper officers to perform the executive duties. Acquiring, however, in view of the fact that the committee had proceeded to recommend other provisions on the subject. When there

shall be such a vacancy as may result from the want of a President of the Senate pro tempore, and Speaker of the House of Representatives, then the committee recommends that the duties prescribed by act of Congress shall devolve on the following officers: First, on the Chief Justice, when he has not participated in the trial of the President; and next, on the Justices of the Supreme Court, according to the order of seniority. The committee is of opinion that none of the already mentioned officers can act as the provisional President, unless he have the qualifications prescribed for eligibility of the President of the United States, as contained in the fourth section of the second article of the Constitution.

The committee further recommends that when the duties of a provisional President, designated by act of Congress, shall be undertaken, they shall be completed in view of a distinct end, to wit, to call into requisition the primary power of electing a President authorized to exercise all the powers of the Executive as emanating from the Constitution; to have the plenitude of constitutional authority; to be the President of the people, elected by recognized process and prescribed form. It is the opinion of the committee that under the fifth clause of the second article of the Constitution, in case of a vacancy occurring in the office of President, that the Vice-President elected by the people becomes the President for the residue of the term. In such a case no power is reserved to elect a President during that term. But under the same clause the committee is equally clear in thinking that the officer designated by Congress to act as President when a vacancy occurs in both the offices of President and Vice-President can act only until the vacancy is removed and a President is elected. And Congress, under this article, must provide the time of holding the election and the day on which the electors are to vote, that being the same throughout the United States. The President so elected is to hold the office during a term of four years; this is the only term known to the Constitution.

Under this article, in case of removal, death, resignation, or inability, must provide the time of holding the election and the day on which the electors are to vote, that being the same throughout the United States. The President so elected is to hold the office during a term of four years; this is the only term known to the Constitution. Under this article, in case of removal, death, resignation, or inability, must provide the time of holding the election and the day on which the electors are to vote, that being the same throughout the United States. The President so elected is to hold the office during a term of four years; this is the only term known to the Constitution.

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Notable Sayings of Notable Men.

"Never say die."—Dr. Hamilton.
 "I pace as I go."—Frank Hagerty.
 "Don't give up the ship."—Harry Ford.
 "Call me your darling again."—John McCarthy.

"I'm a model of a man in plaster."—Joshua Davis.
 "Matters look rather dark for me."—Geo. W. Black.

"I ketched on, and don't you forget it."—Ham. Hughes.
 "Anger and ministers of grace defend us."—East Washington.

"A Burdine the hand is worth two in the bush."—Billy Burdine.
 "The President cannot recover unless he gets well."—James Lansburgh.

"You needn't count your chickens after they're snatched."—Officer O'Hare.
 "I just dined 630 red birds and 193 ortolan yesterday."—Charles Hutton.

"Adolph, I believe I will take another very light cocktail."—Henry Cushing.
 "Honorable friendships should be graciously fostered."—Gen. Saul S. Henkle.

"You Third street men are all a lot of bums and suckers."—Capt. A. Grant.
 "I'm gone to meet my own true love ten thousand miles away."—Capt. Howgate.

"I can't understand, can you, why men will lie when they go a fishing?"—Sol Bieber.
 "A highly ornamented soda fountain is a magnificent fizzle and no mistake."—John Coughlin.

DIED.
 BOWTIE.—On Wednesday, August 31, in Baltimore, after a lingering illness, Pauline, in the 25th year of her age, only daughter of Elias and Minna Bowtie.

UNDERTAKERS.
 R. F. HARVEY, UNDERTAKER, 921 SEVENTH ST. NORTHWEST, Formerly 932 F Street Northwest. The public is respectfully notified that I am no longer at 932 F street, but 921 Seventh street northwest. Make no mistake. R. F. HARVEY.

J. T. CLEMENTS, UNDERTAKER and Funeral Director, No. 70 HIGH STREET, Georgetown.

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 I AM NOW PREPARED TO SHOW MY

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And the Best Makes of American Fabrics.

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\$10

FlannelSuits

Warranted to Keep the Color.

HAMBURGER'S

615 Pennsylvania Ave.,

UNDER METROPOLITAN HOTEL.

FIRST IN WAR, FIRST IN PEACE,

FIRST TO GET IN NEW STOCK GOODS.

Boys' School Suits, 12-14 years, \$2.49, \$3.49, and \$4.49.
 Boys' School Suits, 14-16 years, \$3.49, \$4.49, and \$5.49.
 Children's School Suits, short pants, 3-10, \$2.50, \$3.50, and \$4.50.
 Men's Suits, complete, \$5, \$6 and \$7, worth \$10.
 Straw Hats, half-price; School Wool Hats, 49¢ a doz.
 All summer stock at half value, to close out, at

1914-1916 Pennsylvania Ave.,

J. W. SELBY.

The Best \$1 School Shoes in City. au1

DEVLIN & CO.,

Newest Styles of CLOTHING,

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